

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MICHELLE D.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2011040354

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on July 19, 2011, and August 11, 2011, in Whittier, California.

Michelle D.¹ (Claimant) was present on July 19, 2011; she was not present on August 11, 2011. Victoria Baca represented Claimant on both dates. Judy Castañeda, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (Service Agency).

This matter was consolidated with the case of *In the Matter of Michelle D. v. Eastern Los Angeles Regional Center*, OAH No. 2010120578, and these two cases were heard together by agreement of both parties.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on August 11, 2011.

¹ The surnames of Claimant and her family have been omitted to protect their privacy.

ISSUE

Should the Service Agency be required to continue funding community integration services, provided by Community Integration Project (CIP), for Claimant?

FACTUAL FINDINGS

1. Claimant is a 26-year-old conserved female who receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.² Claimant is eligible for regional center services due to a diagnosis of mild mental retardation. She also has a diagnosis of profound hearing loss.

2. Geraldine D. (Mother) is Claimant's mother and conservator.

3. Claimant is ambulatory and non-verbal. She communicates via reading lips, writing, gestures, pointing, and American Sign Language (ASL). Claimant requires assistance with many aspects of daily living. Claimant displays challenging behaviors such as agitation and physical aggression, and has had several aggressive episodes towards Mother.

4. Since July 9, 2010, Claimant has been living at CRJ Home (CRJ), a residential placement funded by the Service Agency. CRJ is a level-four home that provides 24 hours per day care and supervision, seven days per week.³ The Service Agency also funds an ASL instructor to teach the CRJ staff ASL.

5. Prior to CRJ, Claimant lived at Pure Joy II, a residential facility that was also funded by the Service Agency, from approximately February to July 2010.

6. The Service Agency funds Claimant's attendance at the WAPADH-Delta Day Program (WAPADH), as well as transportation to and from the program. WAPADH is a community based day program that Claimant attends Monday through Friday, from 9:00 a.m. to 3:00 p.m. The program is typically staffed at a client-to-staff ratio of 3 to 1; however, the program has been specifically tailored for Claimant so that she has a one-to-one aide. The Service Agency funds the one-to-one aide, Sarah Lareau (Lareau), who uses ASL to communicate with Claimant and teaches her advanced concepts in ASL. At WAPADH, Claimant is also learning the concept of recycling and the value of money. She takes trips to

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

³ Residential facilities are categorized by levels; the higher the level, the more the support clients require. People who require on-going assistance and have an intense level of behavioral needs are placed in a level-four home.

the park and library and goes shopping. She also sits at coffee shops and uses her computer. Claimant is also looking to do volunteer work through WAPADH. The program providers have the flexibility to shape the program in accordance with Claimant's needs.

7. Claimant attends Progressive Resources once a week, for a total of five hours per month. Progressive Resources is a counseling service, funded by the Service Agency, in which Claimant aims to increase her ability to engage in reciprocal communication with peers, her ability to participate within group activities, and her awareness of appropriate self expression within the group setting.

8. The Service Agency currently funds Claimant's YMCA monthly membership.⁴

9. Since August 4, 2006, Claimant has been receiving community integration services through CIP for 16 hours per week, or a total of 80 hours per month. Claimant attends CIP in the evenings on Tuesday, Wednesday, Friday, and Saturday. CIP is also funded by the Service Agency. At CIP, Claimant has a one-to-one aide who takes her to a variety of recreational activities, including soccer, basketball, bowling, Special Olympics, walks in the community, and dances at Palm Park. She also gets taken to the beauty salon to get manicures and pedicures. She goes to the library, watches movies, and participates in Game Nights provided in the Whittier community. She is also provided street safety training and is learning how to make purchases using money. Reducing Claimant's inappropriate behaviors, such as making loud noises or interrupting conversation, and having Claimant engage in physical exercise two times per week, are also stated objectives of CIP.

10. On December 6, 2010, the Service Agency issued Claimant a Notice of Proposed Action (NOPA), stating that the Service Agency was terminating funding of Claimant's community integration services, provided by CIP, pursuant to Welfare and Institutions Code sections 4648.5, 4646, subdivision (a), 4646.4, subdivision (a)(2), and 4647, and California Code of Regulations, title 17, section 56004, subdivision (c)(1).

11. Claimant timely appealed the decision and was permitted to continue receiving funding for CIP pending the outcome of the appeal.

12. The Service Agency seeks to terminate funding for CIP since it is a social recreational service, and since it is duplicative of the services she receives from WAPADH. The Service Agency reviewed whether Claimant qualifies for an exemption under the law and properly concluded that she did not. Claimant did not demonstrate that CIP is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of her developmental disability. There was no evidence that without funding of CIP, Claimant's home placement is in jeopardy.

⁴ Funding of the YMCA is the issue in the consolidated case of *In the Matter of Michelle D. v. Eastern Los Angeles Regional Center*, OAH No. 2010120578.

13. The Service Agency also contends that CRJ is responsible for services which meet the Individual Program Plan (IPP) objectives, including access and support for socialization and recreational activities. CRJ's Individual Service Plan, dated November 18, 2010, lists a social and recreational goal for Claimant. (Exhibit 19.) Mother contends that CRJ does not provide social and recreational opportunities, other than monthly birthday parties and occasional barbeques. The evidence did not establish whether CRJ is providing additional social and recreational opportunities; however, given Claimant's current schedule, she would not be as available to participate in facility activities. Claimant's IPP, dated August 3, 2010, states, "Staff at CRJ home report that Michelle's participation within facility activities is limited a [*sic*] Michelle is often out with other service providers." (Exhibit 9.)

14. Except to the extent that CIP duplicates services that Claimant already receives at WAPADH, CIP is a social recreational program.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is primarily to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620, and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. The determination of which services and supports are necessary for a consumer is made through the IPP process. The IPP must be developed through a process of individual needs determination, which may include the consumer, the consumer's parents, a legal guardian or conservator, or authorized representative. The consumer and the family must have the opportunity to actively participate in the development of the plan. (§ 4646, subd. (b).) The IPP must include a statement of the consumer's goals and objectives based on the consumer's needs and preferences or, when appropriate, the needs and preferences of the consumer's family. (§ 4646, subd. (a).) The development of the IPP must include consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, the cost-effectiveness of each option, and "generic services and supports when appropriate." (§ 4512, subd. (b); § 4646.4, subd. (a).)

3. Section 4646, states in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the

regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

[¶] . . . [¶]

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

4. Section 4648.5 provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [sic] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

(3) Educational services for children three to 17, inclusive, years of age.

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

5. The Service Agency is not required to continue funding CIP for Claimant since the activities offered through CIP are either social recreational activities and Claimant does not qualify for an exemption, or are duplicative of the services that Claimant is already receiving and, therefore, not a cost-effective use of public resources. Although Claimant may benefit from continuing to attend CIP, Claimant did not demonstrate that attending the CIP is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of her developmental disability. There was no evidence that without funding of CIP, Claimant's home placement is in jeopardy. The following order is, therefore, appropriate.

ORDER

Claimant's appeal is denied and the Service Agency is not required to continue funding community integration services, provided by CIP, for Claimant.

DATED: August 25, 2011

JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days